

### **31A-27a-108 Injunctions and orders.**

- (1) The receivership court may issue an order, process, or judgment including stays, injunctions, or other orders necessary or appropriate to carry out:
  - (a) this chapter; or
  - (b) an approved rehabilitation plan.
- (2) This chapter may not be construed to limit the ability of the receiver to apply to a court other than the receivership court in any jurisdiction:
  - (a) to carry out this chapter; or
  - (b) for the purpose of pursuing claims against any person.
- (3) Except as provided in Subsections (5) and (6) or as otherwise provided in this chapter, the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of:
  - (a) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, an arbitration proceeding, or other action or proceeding against the insurer:
    - (i) that was or could have been commenced before the commencement of the delinquency proceeding under this chapter; or
    - (ii) to recover a claim against the insurer that arises before the commencement of the delinquency proceeding under this chapter;
  - (b) the enforcement against the insurer or against property of the insurer of a judgment obtained before the commencement of the delinquency proceeding under this chapter;
  - (c) an act to:
    - (i) obtain or retain possession of:
      - (A) property of the insurer; or
      - (B) property from the insurer; or
    - (ii) exercise control over property or records of the insurer;
  - (d) an act to create, perfect, or enforce a lien against property of the insurer;
  - (e) an act to collect, assess, or recover a claim against the insurer that arises before the commencement of a delinquency proceeding under this chapter;
  - (f) the commencement or continuation of an action or proceeding against a reinsurer of the insurer:
    - (i) by the holder of a claim against the insurer; and
    - (ii) seeking a reinsurance recovery that is contractually due to the insurer;
  - (g) the commencement or continuation of an action or proceeding by a governmental unit to terminate or revoke an insurance license; and
  - (h)
    - (i) an action described in Subsection (3)(h)(ii):
      - (A) with respect to a contract, agreement, or lease including:
        - (I) a policy;
        - (II) an insurance or reinsurance contract;
        - (III) a surety bond; or
        - (IV) a surety undertaking;
      - (B) whether or not the insurer is a party to the contract, agreement, lease, policy, bond, or undertaking; and
      - (C) if the sole basis for the action is:
        - (I) that the insurer is the subject of a delinquency proceeding;
        - (II) that one or more of the insurer's licenses have been suspended or revoked because the insurer is the subject of a delinquency proceeding; or

- (III) both Subsections (3)(h)(i)(C)(I) and (II); and
- (ii) as to a contract, agreement, lease, policy, bond, or undertaking described in Subsection (3)(h)(i), an action for:
  - (A) termination;
  - (B) failure to renew;
  - (C) suspension of performance;
  - (D) declaration of default;
  - (E) demand for additional, substitute, or replacement security or performance; or
  - (F) other adverse action.
- (4)
  - (a) Except as provided in Subsections (5) and (6) or as otherwise provided in this chapter, the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding, including the enforcement of any judgment:
    - (i) against an insured that is or could have been commenced before the commencement of the delinquency proceeding under this chapter; or
    - (ii)
      - (A) to recover a claim against the insured that arises before or after the commencement of the delinquency proceeding under this chapter; and
      - (B) for which the insurer:
        - (I) is or may be liable under a policy of insurance; or
        - (II) is obligated to defend a party.
  - (b) Subject to Subsection (4)(c), the stay provided by this Subsection (4) terminates 90 days after the day on which the receiver is appointed unless extended by order of the receivership court:
    - (i) for good cause shown; and
    - (ii) after notice to any affected parties and any hearing the receivership court determines is appropriate.
  - (c) Notwithstanding the other provisions of this Subsection (4), any applicable statute of limitations with respect to any claim against an insured is tolled during the period of the stay provided by this Subsection (4) and any extensions.
- (5) Notwithstanding Subsection (3), the commencement of a delinquency proceeding under this chapter does not operate as a stay or prohibition of:
  - (a) except as provided in Subsection (3)(g), a regulatory action by a commissioner of a nondomiciliary state, including the suspension of a license;
  - (b) a criminal action;
  - (c) an act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the act is accomplished within any relation back period under applicable law;
  - (d) a set off as permitted by Section 31A-27a-510;
  - (e) pursuit and enforcement of a nonmonetary governmental claim, judgment, or proceeding;
  - (f)
    - (i) presentment of a negotiable instrument; and
    - (ii) the giving of notice of and protesting dishonor of the negotiable instrument;
  - (g) enforcement of a right against a single beneficiary trust established pursuant to and in compliance with Section 31A-17-404;
  - (h) under or in connection with a netting agreement or qualified financial contract as provided for in Section 31A-27a-611, a right to cause:
    - (i) the netting, liquidation, set off, termination, acceleration, or close out of an obligation; or

- (ii) enforcement of a:
    - (A) security agreement;
    - (B) security arrangement; or
    - (C) other credit enhancement or guarantee or reimbursement obligation;
  - (i) discharge by an affected guaranty association of statutory responsibilities under any statute applicable to the affected guaranty association; or
  - (j) any of the following actions:
    - (i) an audit by a governmental unit to determine tax liability;
    - (ii) the issuance to the insurer by a governmental unit of a notice of tax deficiency;
    - (iii) a demand for a tax return; or
    - (iv) the making of an assessment for any tax and issuance of a notice and demand for payment of the assessment.
- (6) Except as provided in Subsection (7):
  - (a) the stay of an act against property of the insurer under Subsection (3) continues until the property is no longer property of the receivership; and
  - (b) the stay of any other act under Subsection (3) continues until the earlier of the day on which the delinquency proceeding is closed or the day on which the delinquency proceeding is dismissed.
- (7)
  - (a) The receivership court may grant relief from a stay of Subsection (3) or (4), by terminating, annulling, modifying, or conditioning the stay:
    - (i) on request of a party in interest;
    - (ii) after notice and any hearing the receivership court determines appropriate; and
    - (iii)
      - (A) for cause; or
      - (B) with respect to a stay of an act against property under Subsection (3) if:
        - (I) the insurer does not have any equity in the property; and
        - (II) the property is not necessary to an effective plan.
  - (b) For the purposes of this Subsection (7), "cause" includes if:
    - (i) the receiver cancels a policy, a surety bond, or a surety undertaking;
    - (ii) the creditor is entitled, by contract or law, to require the insured or the principal to have a policy, a surety bond, or a surety undertaking; and
    - (iii) the insured or the principal fails to obtain a replacement policy, surety bond, or surety undertaking within 30 days from the date of cancellation.
- (8) In a hearing under Subsection (7), the party seeking relief from the stay has the burden of proof on each issue, which shall be established by clear and convincing evidence.
- (9)
  - (a) The estate of an insurer that is injured by a willful violation of a stay provided by this section is entitled to actual damages, including costs and attorney fees.
  - (b) In appropriate circumstances, the receivership court may impose sanctions in addition to those under Subsection (9)(a).
- (10) Notwithstanding any other provision of law, in relation to any stay or injunction under this section, a bond may not be required of:
  - (a) the commissioner; or
  - (b) a receiver.

Enacted by Chapter 309, 2007 General Session